IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10757 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTILAL GHEVARCHAND JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10757 of 2002

MR RM CHHAYA for Petitioner No. 1

Mr.K.T.Dave, AGP for Respondent No. 1-3

MR PRASHANT G DESAI for Respondent No. 4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/04/2003

ORAL JUDGEMENT

Leave to produce the notification, dated

17.11.2000 issued by the Urban Development & Urban Housing Dept, Govt.of Gujarat, Gandhinagar.

2. Rule. Mr.Desai waives service of rule on behalf of respondent Nos 3 & 4 and Mr.K.T.Dave, Ld.AGP waives service of rule on behalf of respondent Nos 1 & 2. With the consent of learned advocates for parties matter is taken up for hearing.

3. The only point involved in this petition is that whether the State Govt is justified in sanctioning the scheme so far as the subject matter of land is concerned interpreting the order, dated 31.7.97 passed by this court in SCA No.2620/97.

4. Short facts of the case are that the petitioner had made a representation to the authority for considering his grievance against the finalisation of TP Scheme. At that stage the petitioner had preferred SCA No.2620/97 before this court and in the said petition this court ultimately on 31.7.97 after hearing both sides passed the following order:

"Heard Mr.Chhaya for the petitioner and Mr.Sompura with Mr.Patel for respondent Nos 1 to 3 and Mr.P.G.Desai for respondent No.4. The respondents as well as petitioner have made their submissions.

Rule has already been issued in this matter on 2.4.97. After the matter was heard for some time Mr.Chhaya makes a statement that in pursuance of the Division Bench judgment reported in 1988 (1) GLR page 646 the petitioner would like to make a representation to the State Govt under section 65 of the Gujarat Town Planning and Urban Development Act. He states that the representation will be made within one week from today. On the same being made it will be considered and decided in accordance with law expeditiously but preferably within four weeks from the date of receipt of the same. Till then the Town Planning Scheme will be deemed to have not been finalised with respect to the concerned plot. This is in view of the statusquo granted earlier on 2.4.97. Rule is made absolute to that extent with no order as to costs."

5. In view of the fact that the aforesaid operative direction was to consider and decide the representation

and such decision was also to be taken preferably within a period of four weeks from the date of receipt of the same the court had observed that till then the scheme will be deemed to have not been finalised with respect to the concerned plot and, therefore, the petition was disposed of.

6. The State Govt as per the aforesaid direction had to decide the representation within stipulated time limit and until the representation is decided within stipulated time limit the scheme was not to be finalised so far as the plot in question is concerned. However, the notification shows that the direction is interpreted otherwise by the State Govt in as much as no decision of the State Govt is referred to and on the contrary the operative sanction of the preliminary scheme at Cl.(ii) states that "this sanction is subject to final decision of aforesaid order, dated 31.3.97 of this court in SCA No.2620/97 and other matters". In this petition the other proceedings are not much relevant but the aforesaid clearly goes to show that the State Govt has not considered that the SCA No.2620/97 was finally disposed of by the court and therefore there was absolutely no justification nor any justification to make the scheme subject to final decision of SCA No.2620/97. On the contrary, what was contemplated was that the authority had to take decision and thereafter the scheme was to be sanctioned. In the present case, the notification is issued on 17.11.2000, i.e. after the expiry of about 4 weeks and since there is no reference to any decision being taken by the State Govt upon the representation of the petitioner in my view there is total nonapplication of mind on the part of the State authorities while sanctioning the preliminary scheme so far as the plot which was the subject matter of SCA No.2620/97 is concerned.

7. In view of the aforesaid discussion, it will have to be examined as to whether the whole order for sanctioning the preliminary scheme should be set at naught or the discretion should be exercised in such a manner which may not disturb the other part of the scheme which is already sanctioned. As such, since there is no dispute brought on record of the case in these proceedings that in the preliminary scheme which is sanctioned such irregularities have crept in in addition to subject matter of SCA No.2620/97 on the part of the Govt, I am of the view that instead of disturbing the whole order sanctioning the scheme, the following directions would meet with the ends of justice:

(i) The State Govt shall consider and decide the representation which was already made by the petitioner pursuant to the order, dated 31.7.97 passed in SCA No.2620/97 as early as possible preferably within a period of two weeks from the date of receipt of writ of this court.

(ii) After the decision is rendered by the State Govt and if it ultimately results into modifying the preliminary scheme proper declaration shall be made by the State Govt in accordance with law within a period of one month thereafter.

(iii) Till the State Govt takes decision as indicated earlier the statusquo qua the land in question shall be maintained by both sides.

8. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

29.4.03 (JAYANT PATEL,J)